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OFFICE OF PETITIONS

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| In re Application of | : |
| Luxem et al. | : DECISION GRANTING |
| Application No. 10/828,594 | : PETITION |
| Filed: 21 April, 2004 | : |
| Attorney Docket No. 14998US02 | : |

This is a decision on the petition under 37 CFR 1.53, filed on 9 July, 2004, requesting that the above-identified application, without drawings, be accorded a filing date of 21 April, 2004.

The application was filed on 21 April, 2004, without drawings.¹ Accordingly, on 1 July, 2004, Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application" stating that no filing date had been assigned because the application was deposited without drawings, and requiring drawings be filed if necessary. In response, on 9 July, 2004, the present petition was filed, accompanied by an amendment deleting references to the drawing Figures.

Petitioners state that the specification incorrectly made reference to eight missing drawing figures, but state that the drawings are not necessary because the application contains method claims.

It has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).² A review of the record reveals that Claims 1-32 are method claims. Therefore, the present application is deemed to be an application which does not

¹35 U.S.C. § 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented."

²MPEP 601.01(f).

require a drawing for an understanding of the invention. Accordingly, the application, as filed, is entitled to a filing date.

The petition is granted. Since the petition was necessitated by an error on the part of the USPTO, the petition fee submitted on 9 July, 2004, will be credited to counsel's deposit account, No. 13-0017.

The "Notice of Incomplete Nonprovisional Application" mailed on 1 July, 2004, was sent in error and is hereby vacated.

The application will be processed and examined using only the application papers filed on 21 April, 2004.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 21 April, 2004, using only the application papers present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at 703.308.6918.



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